

REMARKS

The Examiner incorrectly asserts in the outstanding Advisory Action, that the “claims are not fully supported by the [perfected] priority document.” Applicants submit though, that the priority document does not need to support each and every claim or limitation. Applicants are entitled to claim priority for those features of the present invention that are fully supported by in the priority document. Section 201.15 of the MPEP states that United States patent applications may claim mixed, or partial, foreign priority with respect to the claims. Accordingly, Response D, filed April 4, 2005, is incorporated by reference herein, and Applicants again contend that the particular teachings of the antedated reference are not prior art.

Applicants emphasize that the features of the present invention that the Examiner asserts are not supported by the priority document, namely, the gradual increase in nitrogen content in the layer, do not appear in the ‘225 (Veerasamy II) reference, and it is this reference that is antedated by Applicants’ foreign priority. The outstanding rejection is under Section 103, and three separate references are cited by the Examiner in this rejection as a proposed combination. The ‘225 patent, however, has a filing date after the foreign priority of the present Application, and therefore is not prior art against the present United States Application, because all of the features cited by the Examiner in this reference are expressly taught within the foreign priority Application to the present United States Application. Accordingly, regardless of the technical structure of the present claims, the teachings from

the ‘225 patent do not antedate the present Application, and thus the ‘225 patent is not prior art.

The Examiner’s only basis for refusing to withdraw the outstanding rejection therefore, is that the present claims contain additional limitations that are not fully supported by the foreign priority document. Applicants point out to the Examiner though, that these particular claim features (gradual increase in nitrogen) were not included in the original language of the independent claims, and this language was only added to the independent claims in a later Amendment. Many recent Federal Circuit cases have established that the legal consequences to a dependent claim are not affected by whether the claim stands in dependent form, or if it is rewritten in independent form. The effective priority of all of the subject matter from the original independent claims should not have been penalized by merely incorporating the subject matter of dependent claims. Nevertheless, although Applicants submit that no amendment should be necessary, the independent claims of the present invention are amended herein to once again separate the subject matter identified by the Examiner into dependent claims to avoid this formality issue.

As the claims presently stand, new claim 21 restores the original content of cancelled claim 10, and new claim 22 restores the content of cancelled claim 19. New claim 23 recites the same limitations as claims 21 and 22, but is dependent from independent claim 1. Claims 4, 11, and 20 have been amended from their independent forms, back into dependent form, under which these claims were originally filed. Accordingly, the Examiner should find that all of the features recited in the independent claims of the present invention

are fully supported by the foreign priority document, and that the '225 patent cannot be considered prior art against the independent claims of the present Application under any of the otherwise conflicting technical interpretations. The outstanding rejection that is based in part on the '225 patent must therefore be withdrawn

For all of the foregoing reasons, Applicants submit that this Application, including claims 1-2, 4, 7-9, 11, 14-18, and 20-23 is in condition for allowance, which is respectfully requested. The Examiner is invited to again contact the undersigned attorney if a further interview would expedite prosecution.

Respectfully submitted,

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